

REMARKS

Please reconsider the application in view of the above amendments and the following remarks. Applicant thanks the Examiner for carefully considering this application.

Disposition of the Claims

Claims 1-15, 22, and 23 are pending in this application. Claims 1-4, 8-10, and 11-15 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,845,940 to Colburn ("Colburn"). Additionally, claims 5-7 and 22 stand rejected under 35 U.S.C. § 103(a) as being obvious over Colburn in view of U.S. Patent No. 6,637,706 to Kim ("Kim"). Finally, claim 23 stands rejected as being directed to an invention that is independent or distinct from the invention originally claimed. In response, to the rejection of claim 23, the Applicant cancels claim 23 thereby rendering the rejection moot. The Applicant respectfully traverses all remaining rejections.

Summary of the Amendments

The Applicant respectfully requests claims 1 and 11 be amended. Particularly, claim 1 is amended to clarify that the motion of the cradle from a retracted to an extended position constitutes motion in a single uninterrupted downward stage, as requested by the Examiner in the Final Office Action of January 18, 2007. As such, the entire rotation between the retracted and extended positions must be in a single uninterrupted downward state such that a second end of the cradle traverses an uninterrupted arcuate path. Similarly, the Applicant respectfully requests amendment of claim 11 to clarify that the means for supporting is maneuvered between the retracted and extended positions in a direction that is outward and downward in relation to the forklift such

that the means for supporting traverses a single state uninterrupted arcuate path in a downward direction.

Rejection under 35 U.S.C. § 102(b)

Claims 1-4, 8-10, and 11-15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Colburn. The Examiner asserts that Colburn discloses all of the features of the present application.

In response, the Applicant respectfully asserts that Colburn does not disclose each of the elements of the present application. “To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, *arranged as in the claim.*” *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001) (emphasis added). Thus, to form a proper rejection under 35 U.S.C. § 102(b), Colburn must include each and every element and limitation of the claim *as arranged*. Because Colburn does not disclose each and every feature of the present application *as arranged* in the claims, Colburn does not constitute a proper anticipatory reference.

As relied on by the Examiner, Colburn discloses a fuel tank mount for forklift trucks adapted to hold a fuel tank in place including a counterweight and a swing arm replaceably carrying the fuel tank and swingable about a tilted pivot axis from the top of the counterweight to the side thereof. Furthermore, the pivot axis is tilted both forwards, at a first tilt angle, and outwards (sic), at a second tilt angle, with respect to a vertical axis, and includes means for limiting rotation of the swing arm while the arm is caused to rotate. (Colburn, claim 1).

More specifically, the description of the motion of the swing arm is described such that when swing arm 28 is further rotated away from the home position to the left, it moves *slightly up and over* the rear of the counterweight 18 into a neutral position which is about 50 degrees off the home position. (Colburn, column 6, lines 11-14) (emphasis added). In the neutral position, the swing arm 28 and the fuel tanks 24 are at its highest elevation, i.e., at *the top of the tilted arc*, and there are no forces tending to move them leftwardly or rightwardly. (Colburn, column 6, lines 15-18) (emphasis added). Based on the drawings and detailed descriptions of Colburn, it is clear that the motion of the swing arm is completely dictated by the tilted pivot pin and there is only one possible trajectory for the swinging motion, i.e., the arm must move upwards first to a neutral position before descending to the lower portion of the arcing trajectory. (Colburn, column 6, line 63 to column 7, line 1). Thus, Colurn describes a fuel tank mount that requires an upward movement to a neutral position before the move in a downward direction. (Colburn, Figure 8, column 6, lines 6-26).

In contrast, the present application, as amended, recites that the cradle is rotatable between a retracted position and an extended position by simultaneously rotating outwardly and downwardly in relation to the vehicle in a single *downward* uninterrupted stage such that the second end of the cradle traverses an uninterrupted arcuate path. (Present Application, claim 1) (emphasis added). Thus, the present application requires that the path of the fuel tank, while moving between a retracted and extend position, be in a single *downward* uninterrupted stage, not the initially upward, then downward motion, as described in Colburn. Moreover, the Applicant respectfully reasserts that the motion of Colburn does not describe a *single uninterrupted downward stage* as disclosed in claim 1 of the present application. Because Colburn describes an initial upward

movement into a neutral position and then movement in a downward direction, the motion of Colburn is not uninterrupted. Thus, Colburn cannot be said to disclose each and every feature of the present application *as arranged* in the claims, as required by Federal Circuit precedent. Furthermore, the Applicant respectfully notes that to be an anticipating reference under § 102, the reference “must sufficiently describe [the] claimed invention to have placed the public in possession of that invention.” *In re Elsner*, 381 F.3d 1125, 1128 (Fed. Cir. 2004). To interpret Colburn’s description as disclosing a *single uninterrupted downward stage* would be a “[v]ague and general representation” and thus “not sufficient in law to support … anticipation under 35 U.S.C. § 102(b).” *Ballantyne Instruments & Electronics Inc v. Wagner*, 345 F.2d 671, 674 (6th Cir. 1965).

For at least this reason, claims 1 and 11 are patentable over Colburn. As dependent claims 2-4, 8-10, and 12-15 properly depend from, and are narrower in scope than independent claims 1 and 11, they are also not properly anticipated by Colburn under 35 U.S.C. § 102(b) for at least the same reasons. Therefore, the Applicant respectfully requests the Examiner remove the rejection under 35 U.S.C. § 102(b) and allow claims 1-4, 8-10, and 11-15 to issue.

Rejection under 35 U.S.C. § 103(a)

Claims 5-7 and 22 stand rejected under 35 U.S.C. § 103(a) as being obvious over Colburn in view of Kim. The Examiner asserts that Colburn in view of Kim teaches a fuel tanks cradle which has a gas spring for retarding the motion of the cradle and straps for holding the fuel tank to the bracket. Thus, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a gas spring and straps in order to retard motion and to secure the fuel tank to the cradle.

In response, the Applicant initially indicates that Kim is completely silent regarding motion of a cradle between a retracted and extended position in a *single uninterrupted downward stage*. Furthermore, the Applicant respectfully notes that claims 5-7 and 22 all properly depend either directly or indirectly from independent claim 1. Because claims 5-7 and 22 are narrower in scope than independent claim 1, the allowability of independent claim 1 in view of the present amendments and remarks will thereby render the obvious rejection moot. As such, the Applicant respectfully requests the Examiner remove the rejection under 35 U.S.C. § 103(a) and allow claims 5-7 and 22 to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0591, under Order No. 06078/231001 from which the undersigned is authorized to draw. Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below.

Dated: April 18, 2007

Respectfully submitted,

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